IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.1102 of 2003
and
CRL.M.P.NO.422 OF 2003

N.M.Karunakaran .. Petitioner

-Vs-

State by
Inspector of Police,
Central Crime Branch,
Egmore, Chennai. .. Respondent

The above Criminal Original Petition has been filed under Section 482 of Cr.P.C as stated therein.

For Petitioner: : Mr.K.Ashokan, S.C.
for Mrs.Gita Ashokan

For Respondent: : Mr.O.Srinath,
Govt. Advocate (Crl.side)

:O R D E R

This Criminal Original Petition has been filed by the accused in C.C.No.9 of 1998 praying to transfer the said case from the file of the Court of Special Judge under TNPID Cases, Chennai to the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai on averments such as that the respondent has registered two criminal cases in Crime Nos.X.758 of 1996 and 968 of 1996 and on completion of the investigation had filed a final report before the Court of Chief Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C. C.No.1066 of 1997 for offences punishable under Sections 120.B, 409, 4 20, 506(I) I.P.C. and Sections 3,4,5 and 6 of Prize Chit and Money Circulation Scheme (Banning) Act, 1978; that the final report was filed against 12 persons and the petitioner was shown as the first accused on the allegation that the petitioner was the Managing Director of Devi Gold House and was offering incentives for deposits and also high rate of interest; that on maturity of the fixed deposits, the sums were not repaid to the depositors as had been promised initially.

2. It is further averred that in the final report it is mentioned that the offences are alleged to have been committed during 1996 and the final report itself had been filed on 7.2.1997 and the same was taken on file on 21.2.1997 by the Chief Metropolitan Magistrate; that thereafter the case was transferred to the Court of Special Judge, TNPID Act, Chennai during July 1998; that the TNPID Act came into force only on 7.8.1997 in which the special enactment provides for enhanced punishment and for attachment of properties; that the provisions of the Act do not have any retrospective effect; that on the date of alleged offence the Act had not come into force and since the Act had not come into force at the time of the commission of the offence, he cannot be tried and convicted for a ny offence except for the violation of law in force at the time of commission of the offence charged in terms of Article 20(1) of the Constitution of India; that in view of the Act not having come into force at the time of the commission of offence the Court of Special Judge constituted under TNPID Act is not competent to invoke the provisions of the said Act and try the petitioner for the alleged violation of provisions of the Act and for these reasons the petitioner would submit that the case in C.C.No.9 of 1998 pending on the file of the Court of Special Judge, TNPID Act, Chennai has to be transferred to the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai who is competent to try the offences which are set out in the original final report and would pray to pass an order to the said effect.

3. During arguments, the learned senior counsel appearing on behalf of the petitioner would submit that it is Article 20(1) of the Constitution of India which is relevant to the context of the case. Resisting the said Article the learned counsel would exhort that any one could be convicted of an offence for violation of the law in force only at the time of commission of the act charged as an offence, nor could he be subjected to a penalty greater than what is inflicted under the law in force, at the time of commission of the offence.
4. At this juncture, the learned counsel would also cite a judgment reported in 1991 SCC (Criminal) 959 wherein in a case regarding the insertion of Section 304-B of I.P.C. by Dowry Prohibition (Amendment) Act 1986, into Indian Penal Code with effects from November 1986 so as to make the offence more stringent than Section 498-A of I.P.C. wherein the incident had occurred prior to 19.11.1986, the Hon'ble Apex Court held:

"The offence punishable under Section 304-B, known as dowry death, was a new offence created with effect from November 19, 1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence than Section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of pre-existing substantive offence. The contention that Section 304-B contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in Section 113-B of the Indian Evidence Act. The fact that the Evidence Act was so amended simultaneously with the insertion of Section 304-B in the Penal Code by the same Amendment Act is another pointer in this direction."

5. The learned counsel would also cite two more judgments

respectively reported in (i) 1989 LAW WEEKLY (CRL.) 141 (SELVAMANI v. STATE, BY STATION HOUSE OFFICER, OOMANGALAM POLICE STATION, SOUTH ARCOT DISTRICT) and (ii) (1997)8 SCC 732 (KALPANATHRAI v. STATE (THROUGH CBI).

6. So far as the former judgment is concerned it is by a learned single Judge of this Court pronounced way-back in the year 1989 in a quash petition wherein also regarding the new Rule amendment introduced by the amending Act under Section 304-B I.P.C. which came into force after the commission of the offence, the learned single Judge has held:
"S.304-B, I.P.C., was put in the statue book on 19.11.1986 whereas the offence in this case is alleged to have been committed on 3.11.1986 . According to Art.20(1) of the Constitution of India, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The latter part of the Article will not be attracted, but the former part fully comes into operation. Therefore the penal provision can have no retrospective effect. The charge framed by the trial Court has to be necessarily quashed and is accordingly quashed. The matter has to be remitted back to the file of the Assistant Sessions Judge, to act in accordance with the Ss.227 and 228, Crl.P.C., on the material placed before him and dispose of the case in accordance with law."

7. In the latter judgment which is one by the Hon'ble Apex Court is regarding Section 3(5) (as inserted by Act 43 of 1993) which introduces new definition for the expression terrorist act into Terrorist and Disruptive Activities (Prevention) Act, 1987, the Hon ble Apex Court has held:

In absence of any evidence to show that the terrorists gang of which accused were members committed any terrorist act after commencement of Amendment Act 43 of 1993 conviction cannot be sustained within the meaning of Article 20(1) of the Constitution of India.
8. Citing the above judgments the learned Senior Counsel would exhort that in the case in hand since commission of the offence was prior to the introduction of the TNPID Act the charge sheet cannot be laid for the accused being tried under the said Act and only they could be tried under those provisions of law which were in force and became applicable to the offence complained of at that time within the meaning of Article 20(1) of the constitution of India and would pray for the relief extracted supra.

9. On the part of the learned Government Advocate on the Criminal side he would generally argue that as per Section 6 of the TNPID Act all pending cases should be transferred to the Special Court. Citing yet another provision of law under Section 13(1) and 13(2) the learned Government Advocate would point out that the punishment is made more stringent than what it has been contemplated before this new Act came into force and the higher punishment contemplated in the new Act only could not be inflicted even though there is no impediment for the trial of cases transferred to the Special Court which has been done only in accordance with the provisions of the Act and it cannot be said that the trial cannot be held by the Special Court constituted nor the competency of the Special Court in conducting the trial since such of

the Acts are neither repugnant nor any illegality is involved in those cases being tried in the Special Court.

10. In clarification the learned Senior Counsel would retort that a separate procedure is prescribed under the new Act and under section 6(3) only those pending cases to which the new Act applies could be tried and not every pending case.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both since, to the facts and circumstances of the case in hand and the relief sought for by the petitioner, the relevant provision of law is Article 20(1) of the Constitution of India within the meaning, implications, and significance of which a decision has to be taken in the above Criminal Original Petition seeking retransfer of the case from the Special Court of TNPID Act cases to that of the Court in which the case lay at the time of registration of the FIR i.e. the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai and therefore, it is relevant to extract Article 20(1) of the Constitution of India.

20. Protection in respect of conviction for offences:-(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than tha t which might have been inflicted under the law in force at the time of the commission of the offence.

12. On a plain reading of the above Constitutional provisions a person could be convicted for any offence for the violation of the law in force at the time of commission of the act charged as an offence, nor he be subjected to a penalty greater than what could be implicated under the law in force at the time of commission of the said offence. In short, it could be stated that the conviction could be only in accordance with only the law in force at the time of commission of the act charged and the penalty shall also be inflicted in accordance with law in force at the time of commission of the offence. Needless to mention that it is the time of commission of offence which is a relevant factor for consideration to arise at the conviction and sentence to be inflicted meaning thereby that only in accordance with the then prevailing laws and not in accordance with the new Legislation or amendment introduced after the commission of the offence for any violation to be dealt with not could any penalty greater than what is contemplated under the law in force at the time of commission of the offence, be inflicted.

13. However, the learned Government Advocate on the Criminal side citing Sections 6 and 13(1) and 13(2) of the TNPID Act, 1997 would exhort that under Section 6(1) (a), the Special Court in the cadre of a District and Sessions Judge shall be constituted by the Government with the concurrence of the Chief Justice of the High Court which has been constituted and is functioning and it is to this Court the case in hand has also been transferred.

As per Section 6(2) of the TNPID Act no Court other than the Special

Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply and Section 6(3) contemplates that any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

14. Needless to mention that Sections 6(2) and 6(3) are mandatory in nature. So far as these sub-sections (2) and (3) of Section 6 are concerned as it has been well remarked by the learned Government Advocate they have tobe complied with and in compliance of these mandatory provisions of law all the pending cases of such nature instituted in other Courts immediately after the advent of this Act got transferred to the Special Court having jurisdiction in respect of those matters were transferred and therefore according to the Government Advocate the transfer effected to the Special Court is just and proper. The learned Government Advocate would further submit that added to these Sections, Section 13(1) and 13(2) would also specify the procedure to be adopted by the Special Court which is nothing but the procedure prescribed in the Code of Criminal Procedure, 1973 and therefore, the learned Government Advocate would seek no valid ground for the petitioner to offer while the law is such and particularly as per Section 14 of the TNPID Act the same being the Special Act, has got the over-riding effect, notwithstanding anything contained in any other law for the time being in force or customary usage which is inconsistent with the provisions of this Act. Learned Government Advocate during the course of his arguments, would also point out that only the higher punishment contemplated in the new Act could not be inflicted and there is no impediment for the trial of cases transferred to the Special Court being conducted by the said Court itself, since the same is going to be conducted only in accordance with the procedures prescribed by the Cr.P.C. and therefore, the learned Government Advocate would end up his arguments with the note to dismiss the above Criminal Original Petition filed by the petitioner.

15. Now the point for consideration is whether the transfer of the said case from the Court of original jurisdiction i.e. Additional Chief Metropolitan Magistrate to that of the Special Court constituted under the TNPID Act is violative of the Article 20(1) of the Constitution of India so as to order retransfer the case to the earlier Court for the conduct of trial as it has been prayed for on the part of the petitioner in the above Criminal Original Petition?

16. Even though as against the provisions of the general Act such as the Cr.P.C., the provisions of the TNPID Act will definitely prevail over since it has got the overriding effect not only being a Special Act but also being mandatorily provided for transferring cases of such nature to the jurisdiction of the Special Court constituted under the new Act as per Section 6 of the said Act, still, the test is whether those provisions of the Special Act, the TNPID Act, 1997, could have anything todo with any of the Articles of the law of the land, the Constitution of India, the answer is certainly in the negative and therefore it is relevant to again focus the attention to Article 20(1) of the Constitution of India wherein it has been clearly spelt out that it is not under any other law excepting the law in force at the time of commission of the act charged as an offence for such violation and therefore,

the arguments advanced on the part of the learned Government that as per Section 6(2) and 6(3), since the cases have been transferred to the jurisdiction of the Special Courts there is no impediment in conducting the trial in accordance with the procedures established by Cr.P.C. and only the penalty cannot go beyond what has been contemplated by the law in force at the time of the commission of the act charged falls to the ground since it is not only the sentence but the conviction as well cannot be maintained and without arriving at the conviction, question of sentence cannot come into play. While the Constitutional mandate is such that not only the conviction but the sentence as well cannot be arrived at and inflicted otherwise than in accordance with the law in force at the time of commission of the act charged, the provisions of which are alleged to have been violated and therefore since being violative of Article 20(1) of the Constitution of India no conviction or sentence could be maintained, under the new Act and therefore, there is no point in permitting the trial tobe held by the Special Court and in result the prayer of the petitioner to retransfer the case from the file of the Court of Special Judge for TNPID Act cases, Chennai, to the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai has to be considered and hence the following order:

In result,

(i) the above Criminal Original Petition succeeds and the same is allowed;

(ii) the case in C.C.No.9 of 1998 pending on the file of the Court of Special Judge, TNPID Act cases, Chennai is ordered to be transferred to the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai;

(iii) the matter is remitted back to the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai to frame charges in accordance with the provisions of law which were in force at the time of commission of the offence on such materials placed before the said Court and to conduct the trial following the procedures so as to deliver the judgment on merits and in accordance with law.

iv) Consequently, Crl.M.P.No.422 of 2003 is closed.

Index:Yes
Internet:Yes
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To
1. The Inspector of Police, Central Crime Branch,Egmore, Chennai.
2. The Special Court TNPID Act Cases, Chennai.
3. The Additional Chief Metropolitan Magistrate, Egmore, Chennai-8.
4. The Public Prosecutor, High Court, Madras.